

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 SUPERIOR COURT
 YAVAPAI COUNTY, ARIZONA
 FOR THE COUNTY OF YAVAPAI

2012 FEB -7 AM 9:28 ✓

SANDRA K. BARNHAM, CLERK

BY: *Magistrate Harshman*

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WARREN R. DARROW

STATUS CONFERENCE

MAY 31, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

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4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No V1300CR201080049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Defendant.) Case No 1 CA-CR 11-0895
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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R DARROW
16 STATUS CONFERENCE
17 MAY 31, 2011
18 Camp Verde, Arizona
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23

24 REPORTED BY
25 MINA G HUNT
AZ CR NO 50619
CA CSR NO 8335

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1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Tuesday, May 31,
3 2011, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
4 BY: SHEILA SULLIVAN POLK, ATTORNEY
5 BY: BILL R. HUGHES, ATTORNEY
6 255 East Gurley
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8 (Appearing by telephone.)
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17 MUNGER TOLLES & OLSON, LLP
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1 For the Witness, Mark Rock:

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1 P R O C E E D I N G S

2 THE COURT: I guess we're on two different
3 phone systems, so everyone will please speak up.
4 I'm going to call V1300CR201080049, State
5 versus James Arthur Ray. I'll go through the
6 appearances.
7

8 Mr. Kelly, are you there?

9 MR. KELLY: Judge, I'm here as well as Luis Li
10 and Mr. Ray on the same telephone.

11 THE COURT: Okay. What about Mr. James Ray?

12 MR. KELLY: He's present, Judge

13 THE COURT: Okay.

14 And then for the state I have listed

15 Ms. Polk

16 MS. POLK: Yes, Your Honor.

17 THE COURT: Mr. Hughes?

18 MR. HUGHES: Yes, Your Honor.

19 THE COURT: And Pam Moreton from victims
20 services.

21 MS. MORETON: Yes, Your Honor.

22 THE COURT: Okay.

23 Bob Launders is here in court.

24 And I think, Mr. Mark Rock, can you hear
25 me?

THE WITNESS. Yes, Your Honor.

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01:39:29PM 1 THE COURT: Okay. I know you're on a
 01:39:31PM 2 different phone. So I've asked people to speak up.
 01:39:34PM 3 Mr. Launders, I'm going to give a very
 01:39:37PM 4 brief sketch of the request you made. I know you
 01:39:40PM 5 have an envelope there.
 01:39:41PM 6 MR. LAUNDERS: Yes, sir.
 01:39:42PM 7 Mr. Rock, can you hear me?
 01:39:44PM 8 THE COURT: Go ahead. Can you hear your
 01:39:46PM 9 lawyer, Mr. Rock?
 01:39:48PM 10 THE WITNESS: I can hear you.
 01:39:50PM 11 THE COURT: Okay.
 01:39:53PM 12 MR. LAUNDERS: All right.
 01:39:54PM 13 What I have asked the Court to take under
 01:39:56PM 14 seal is the reasons for my opinion and advice that
 01:40:00PM 15 I'm prepared to put on the record as far as what
 01:40:03PM 16 I'm telling my client he should do. And then I'm
 01:40:06PM 17 going to tell the Court that as of -- at the
 01:40:09PM 18 present time it's my belief that my client is not
 01:40:11PM 19 going to follow his lawyer's advice, is willing to
 01:40:15PM 20 accept use immunity from the state and, basically,
 01:40:16PM 21 take the witness stand and be asked questions that
 01:40:21PM 22 I think are placing him at risk.
 01:40:23PM 23 THE COURT: I just want to put this procedure
 01:40:25PM 24 down. Ms. Rybar indicated to me earlier,
 01:40:28PM 25 Mr. Launders, that you wanted to have something on
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01:40:30PM 1 the record with just you and the Court or something
 01:40:33PM 2 like that.
 01:40:33PM 3 MR. LAUNDERS: That is correct, Your Honor. I
 01:40:35PM 4 wanted to put my reasons for why I was advising my
 01:40:38PM 5 client for my protection with the Court outside the
 01:40:43PM 6 presence of both the state and the defense, but
 01:40:48PM 7 certainly with Mr. Rock's permission to hear
 01:40:52PM 8 because it involved attorney-client privileged
 01:40:56PM 9 communications.
 01:40:57PM 10 THE COURT: And I was not willing to do it in
 01:40:59PM 11 that fashion. So what I relayed to you is that if
 01:41:02PM 12 you want to have something on the record that you
 01:41:05PM 13 want it to be -- I'm not going to consider it in an
 01:41:09PM 14 ex parte fashion. You can submit it to me under
 01:41:12PM 15 seal. It will be filed and of record. And then
 01:41:14PM 16 you have the record for whatever it is you want to
 01:41:18PM 17 say concerning advice or whatever.
 01:41:21PM 18 So if you want to hand me that, I will go
 01:41:23PM 19 ahead and make it -- place it under seal.
 01:41:23PM 20 MR. LAUNDERS: That's what I would ask, Your
 01:41:23PM 21 Honor.
 01:41:32PM 22 THE COURT: I'll note that Mr. Loder happens
 01:41:35PM 23 to be here to conduct the calendar in other cases.
 01:41:35PM 24 But I have the cause number on an
 01:41:42PM 25 envelope. I don't know the contents. It's just my
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01:41:43PM 1 understanding that Mr. Launders wanted to state
 01:41:46PM 2 something I was not willing to entertain in an ex
 01:41:48PM 3 parte fashion.
 01:41:50PM 4 Mr. Launders, what can you state of
 01:41:53PM 5 record?
 01:41:54PM 6 MR. LAUNDERS: Well, I can tell you that what
 01:41:55PM 7 I've given the Court in the sealed document is
 01:41:58PM 8 solely to protect my interest in the event this
 01:42:02PM 9 goes the way I think it could very well go and
 01:42:06PM 10 Mr. Rock down the road blames me for somehow giving
 01:42:08PM 11 him bad advice. So that's the only reason I have
 01:42:12PM 12 offered that envelope.
 01:42:13PM 13 And I don't believe since it involves
 01:42:15PM 14 privileged communications, either party, the
 01:42:18PM 15 defense or the state, has a right to access that
 01:42:21PM 16 information.
 01:42:21PM 17 THE COURT: Well, this matter is going to be
 01:42:24PM 18 sealed. This is going to be sealed. It will not
 01:42:26PM 19 be opened unless there is further order of the
 01:42:29PM 20 Court or until there is further order. I'm not
 01:42:31PM 21 going to look at it either. I don't know what's in
 01:42:33PM 22 here.
 01:42:34PM 23 MR. LAUNDERS: Then, Your Honor, I've told my
 01:42:35PM 24 client that he should exercise his Fifth Amendment
 01:42:38PM 25 rights and refuse the use immunity that the state
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01:42:41PM 1 is offering him. But thus far Mr. Rock has
 01:42:43PM 2 indicated he wishes to accept that use immunity and
 01:42:47PM 3 present himself as a witness and submit himself to
 01:42:51PM 4 direct and cross-examination.
 01:42:52PM 5 THE COURT: I'm going to ask you from your
 01:42:54PM 6 perspective first, Mr. Launders, did you have
 01:42:57PM 7 sufficient time to go over the case with Mr. Rock?
 01:43:04PM 8 MR. LAUNDERS: Yes, Your Honor. I got all the
 01:43:06PM 9 information I needed last Friday. And I talked at
 01:43:09PM 10 some length in three or four conversations with
 01:43:11PM 11 Mr. Rock this weekend.
 01:43:13PM 12 THE COURT: And you were able to fully explain
 01:43:18PM 13 what use immunity means and discuss all those
 01:43:21PM 14 aspects?
 01:43:21PM 15 MR. LAUNDERS: Yes, sir.
 01:43:22PM 16 THE COURT: Mr. Rock, I want to ask you just
 01:43:24PM 17 some questions and really, basically, yes or no.
 01:43:26PM 18 If you need more time to talk to Mr. Launders, I
 01:43:28PM 19 need to know that also. I don't want any extensive
 01:43:33PM 20 discussion here, you being on the phone,
 01:43:35PM 21 Mr. Launders being here in person.
 01:43:37PM 22 But did you hear Mr. Launders indicate to
 01:43:40PM 23 me that he did have sufficient time to discuss the
 01:43:42PM 24 case with you? Did you hear that?
 01:43:44PM 25 THE WITNESS: I heard that. Yes.
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01 43 46PM 1 THE COURT: Do you agree with him?

01 43 47PM 2 THE WITNESS: Well, no. Because he didn't

01 43 53PM 3 tell me he was going to do what he just did.

01 44 01PM 4 THE COURT: So you need to talk to

01 44 01PM 5 Mr. Launders some more? Is that what you're

01 44 05PM 6 saying? These are yes or no. Do you need to talk

01 44 05PM 7 to Mr. Launders some more?

01 44 07PM 8 THE WITNESS: No.

01 44 08PM 9 THE COURT: Okay. Did he explain to you what

01 44 11PM 10 use immunity is?

01 44 17PM 11 THE WITNESS: Yeah. Anything I say in the

01 44 22PM 12 court can't be used against me.

01 44 24PM 13 THE COURT: Okay. You know, I appointed an

01 44 27PM 14 attorney so that you could discuss these things and

01 44 30PM 15 make sure you understand. That's the general

01 44 32PM 16 concept of use immunity. There are other -- it

01 44 37PM 17 doesn't mean that a prosecution is barred when

01 44 39PM 18 there is use immunity. It has to do with

01 44 42PM 19 statements that are actually made in court. If

01 44 44PM 20 there is an independent source for information, it

01 44 47PM 21 can be a completely different matter.

01 44 48PM 22 Did he go over all that with you, that

01 44 50PM 23 type of information?

01 44 54PM 24 THE WITNESS: Okay.

01 44 55PM 25 THE COURT: Have you discussed all these

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01 44 58PM 1 things with Mr. Launders?

01 45 00PM 2 THE WITNESS: Yes. I discussed -- Yes. I

01 45 03PM 3 heard that.

01 45 04PM 4 THE COURT: Okay. Then did you have any

01 45 06PM 5 further questions? And I'm not talking about on

01 45 08PM 6 the record. You have a right to consult with him

01 45 10PM 7 privately. Do you wish to consult with

01 45 13PM 8 Mr. Launders further privately?

01 45 16PM 9 THE WITNESS: Okay.

01 45 17PM 10 THE COURT: Do you want to do that?

01 45 20PM 11 THE WITNESS: No, I don't.

01 45 21PM 12 THE COURT: Okay.

01 45 22PM 13 Then, Mr. Launders, from what you

01 45 25PM 14 understand, it's Mr. Rock's intention just to

01 45 28PM 15 proceed with testimony, his testimony tomorrow?

01 45 31PM 16 MR. LAUNDERS: That's my understanding, Your

01 45 32PM 17 Honor.

01 45 32PM 18 THE COURT: Is that what you intend to do,

01 45 38PM 19 Mr. Rock?

01 45 37PM 20 THE WITNESS: Yes, Your Honor.

01 45 38PM 21 THE COURT: Okay.

01 45 43PM 22 I'll ask if any of the attorneys wish

01 45 43PM 23 to --

01 45 43PM 24 Anything else you want to address on this

01 45 45PM 25 topic, Ms. Polk, Mr. Hughes?

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01 45 48PM 1 MR. HUGHES: No, Your Honor. Nothing from the

01 45 49PM 2 state. Thank you.

01 45 50PM 3 THE COURT: Mr. Kelly, Mr. Li?

01 45 54PM 4 MR. KELLY: Judge, this is Tom Kelly. We

01 45 56PM 5 could not hear the specific responses of Mr. Rock.

01 45 58PM 6 But I believe we know the answers based on your

01 46 02PM 7 questions.

01 46 03PM 8 Regardless, Judge, given the comment by

01 46 06PM 9 Mr. Launders and his advice to his client to not

01 46 13PM 10 testify and exercise his Fifth Amendment rights, at

01 46 17PM 11 this point in time, Judge, we would move to strike

01 46 19PM 12 the testimony of Mark Rock.

01 46 23PM 13 I believe what's ultimately at issue are

01 46 28PM 14 the due-process rights of James Ray. This causes a

01 46 31PM 15 great deal of concern. We perhaps need a couple

01 46 34PM 16 more hours to take a look at some case law. But I

01 46 41PM 17 don't think it's as simple as just proceeding to

01 46 46PM 18 trial allowing the testimony of a witness that a

01 46 48PM 19 member of the State Bar of Arizona is advising not

01 46 51PM 20 to testify because of concerns regarding the

01 46 58PM 21 truthfulness of his testimony. I believe that's a

01 47 01PM 22 real issue for defense counsel, the Court and the

01 47 05PM 23 State of Arizona to consider.

01 47 09PM 24 That's kind of a lengthy response, Judge,

01 47 11PM 25 but we're somewhat caught off guard here.

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01 47 15PM 1 THE COURT: This was something we needed to

01 47 18PM 2 discuss.

01 47 19PM 3 So, Mr. Hughes or Ms. Polk, any initial

01 47 23PM 4 response, essentially, nor a motion to just strike

01 47 28PM 5 the testimony at this point, a concern -- I think

01 47 30PM 6 you heard Mr. Kelly.

01 47 32PM 7 MR. HUGHES: I did, Your Honor. Perhaps

01 47 33PM 8 Mr. Kelly's motion is based on what he said, he

01 47 36PM 9 could not hear Mr. Rock's response. Mr. Rock

01 47 40PM 10 indicated he would be willing to testify tomorrow

01 47 43PM 11 pursuant to a grant of the use immunity. There is

01 47 47PM 12 no basis to strike his testimony or not to proceed.

01 47 52PM 13 This is the sort of situation that's

01 47 54PM 14 governed by A.R.S. 13-4064. Mr. Rock will be

01 48 02PM 15 protected. His Fifth Amendment rights will be

01 48 08PM 16 protected pursuant to that grant of immunity. The

01 48 08PM 17 defendant's right to confront the witness will also

01 48 10PM 18 be protected.

01 48 12PM 19 And so the state would request that this

01 48 14PM 20 motion to strike Mr. Rock's testimony be denied.

01 48 18PM 21 This isn't a new issue the defense really needs to

01 48 23PM 22 think about. We put on the record last week that

01 48 25PM 23 we were prepared to offer the use immunity so that

01 48 28PM 24 the testimony could proceed.

01 48 32PM 25 THE COURT: I assume Mr. Kelly realized that

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01 48 35PM 1 Mr. Rock indicates his intention to testify.
 01 48 40PM 2 MR. KELLY: Judge, that's correct. Please.
 01 48 41PM 3 It's not quite as simple as described by
 01 48 42PM 4 Mr. Hughes. Understand that we have a member in
 01 48 43PM 5 good standing of the State Bar of Arizona advising
 01 48 50PM 6 a witness not to testify. Pursuant to that advice
 01 48 53PM 7 he's filing sealed documents with the Court that no
 01 48 57PM 8 one knows the contents of.

01 49 00PM 9 And despite that assertion on the record,
 01 49 08PM 10 Mr. Rock is denying the advice of counsel and
 01 49 12PM 11 willing to testify under a simple grant of use
 01 49 17PM 12 immunity. So the issue is a little more
 01 49 20PM 13 complicated than simply stated by Mr. Hughes.

01 49 23PM 14 And also, Judge, if there is use
 01 49 27PM 15 immunity, we've requested and have yet to receive
 01 49 30PM 16 an immunity agreement that we might see in writing
 01 49 34PM 17 before tomorrow's testimony.

01 49 37PM 18 MR. LI: Also, Your Honor -- this is Luis Li
 01 49 40PM 19 here. And you are perhaps far more familiar with
 01 49 43PM 20 procedures here. But just reading 13-4064, it
 01 49 48PM 21 appears to require the request from the prosecuting
 01 49 52PM 22 attorney requesting the Court order the person to
 01 49 56PM 23 testify and then this immunity grant takes place.

01 50 01PM 24 THE COURT: Normally there is just the
 01 50 03PM 25 paperwork provided to me. And that's how I've seen
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01 50 07PM 1 it done.

01 50 08PM 2 MR. HUGHES: Your Honor, the state will
 01 50 09PM 3 prepare a statement that we can provide to
 01 50 14PM 4 Mr. Launders, Mr. Rock, obviously with copies to
 01 50 17PM 5 the defense, indicating that we are granting the
 01 50 21PM 6 full use immunity to Mr. Rock.

01 50 25PM 7 MR. LAUNDERS: Let me interject one thing for
 01 50 27PM 8 my client, who doesn't want to listen to his
 01 50 30PM 9 lawyer's advice. The use immunity does not cover a
 01 50 33PM 10 witness who somebody figures has perjured
 01 50 37PM 11 themselves. And that's a glaring omission in
 01 50 39PM 12 everything that everybody said thus far. The use
 01 50 42PM 13 immunity that the state can provide this witness
 01 50 45PM 14 encompasses a great deal, but it does not encompass
 01 50 52PM 15 somebody who is determined to perjure themselves on
 01 50 52PM 16 the witness stand. For that they can't give my
 01 50 56PM 17 client protection.

01 50 56PM 18 THE COURT: Yes or no on this, Mr. Rock: Did
 01 50 58PM 19 you hear Mr. Launders just then?

01 51 02PM 20 THE WITNESS: I'm sorry. The last probably
 01 51 04PM 21 five minutes I haven't been able to hear much.

01 51 04PM 22 THE COURT: Well, you do need to hear this
 01 51 10PM 23 last thing that Mr. Launders --

01 51 11PM 24 Mr. Launders, would you please step
 01 51 12PM 25 forward. I'd request you do that. Get closer to

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01 51 16PM 1 the speakerphone over here if you would and
 01 51 22PM 2 elaborate the advice. You need to come to the
 01 51 24PM 3 actual phone. That's the problem.

01 51 26PM 4 MR. LAUNDERS: Mr. Rock, as I've previously
 01 51 28PM 5 told you, the use immunity that everybody
 01 51 31PM 6 acknowledges that you're going to receive is
 01 51 37PM 7 intended to give you protection from prosecution
 01 51 39PM 8 from some of the things that you might say. But
 01 51 42PM 9 you do understand that it does not and it cannot
 01 51 46PM 10 protect you from perjury if it's determined that
 01 51 50PM 11 you've committed perjury on the witness stand. Use
 01 51 53PM 12 immunity is not a defense.

01 51 55PM 13 And we've talked about this at some
 01 51 56PM 14 length; correct?

01 51 57PM 15 THE WITNESS: Correct.

01 51 58PM 16 MR. LAUNDERS: Thank you, sir.

01 52 00PM 17 THE COURT: Mr. Li, the answer to your
 01 52 08PM 18 question, thought, is yes. There needs to be an
 01 52 11PM 19 order. That's normally been provided to me in
 01 52 14PM 20 other cases. And it's going to be provided,
 01 52 15PM 21 according to Mr. Hughes, in this matter. So that
 01 52 18PM 22 will be taken care of.

01 52 21PM 23 Mr. Kelly indicated that perhaps the
 01 52 23PM 24 defense may wish to file something. What I'm going
 01 52 25PM 25 to do is ask Mina to go ahead and make a transcript
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01 52 29PM 1 of Mr. Rock's statements so you have those. And
 01 52 34PM 2 those can be sent to you so you can see -- you
 01 52 38PM 3 know -- so there is no misunderstanding there as to
 01 52 40PM 4 what he said here this afternoon.

01 52 43PM 5 MR. LI: Thank you, Your Honor.

01 52 45PM 6 Just to protect the record -- and I could
 01 52 48PM 7 not hear Mr. Launders -- his statements. But I
 01 52 53PM 8 presume it would also contain the various
 01 52 56PM 9 admonitions in 13-4064 indicating however a person
 01 53 05PM 10 may be nevertheless prosecuted or subjected to
 01 53 10PM 11 penalty or forfeiture for any perjury, false
 01 53 12PM 12 swearing or contempt, et cetera.

01 53 17PM 13 I just want to make sure that we have --
 01 53 20PM 14 that it's not just a simple recitation of words,
 01 53 24PM 15 "use immunity." Normally it's been my experience
 01 53 29PM 16 that when a person is being advised of their
 01 53 33PM 17 various constitutional rights and chooses to waive
 01 53 35PM 18 them, that there will be a very fulsome discussion
 01 53 39PM 19 of what they're potentially facing and what the
 01 53 45PM 20 potential consequences are and what they're giving
 01 53 48PM 21 up.

01 53 48PM 22 And I've seen the state issue use
 01 53 52PM 23 immunity or, I guess, free-talk letters that are
 01 53 55PM 24 two or three pages long. So I just want to protect
 01 53 59PM 25 the record, make sure that we're not getting

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01 54 04PM 1 Mr. Rock a two-sentence letter.

01 54 07PM 2 I don't know what the practice is here,

01 54 08PM 3 but that's always been what I've -- my experience

01 54 10PM 4 whenever somebody is giving up rights. There needs

01 54 11PM 5 to be a fairly careful recitation of what rights

01 54 18PM 6 are being given up.

01 54 22PM 7 MR. HUGHES: Your Honor, I have every

01 54 24PM 8 confidence Mr. Launders has fully advised Mr. Rock

01 54 27PM 9 of the issues and the rights that pertain to this.

01 54 31PM 10 The state will prepare a document that we

01 54 34PM 11 believe is similar to what's been filed in other

01 54 36PM 12 cases in the past, and certainly that would comply

01 54 38PM 13 with A.R.S. 13-4064.

01 54 42PM 14 THE COURT: And, Mr. Li, apparently you didn't

01 54 48PM 15 hear. But that's what Mr. Launders was doing is

01 54 48PM 16 specifically discussing that use immunity would not

01 54 52PM 17 apply to potential perjury. That's what he was

01 54 57PM 18 discussing.

01 54 58PM 19 MR. LI: I appreciate that, Your Honor. We

01 54 58PM 20 just can't hear very well here.

01 55 01PM 21 THE COURT: I know.

01 55 07PM 22 MR. KELLY: Judge, ultimately, just to state

01 55 09PM 23 it simply, it begs the question how could a court

01 55 11PM 24 or the State of Arizona allow a witness to take the

01 55 14PM 25 stand and perjure himself? That's why I believe

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01 55 21PM 1 the issue is just more simple than that described

01 55 24PM 2 by Mr. Hughes. And I think there needs to be some

01 55 30PM 3 serious consideration about the propriety of

01 55 34PM 4 Mr. Rock's testimony.

01 55 35PM 5 THE COURT: I think Mr. Li may have been

01 55 38PM 6 talking about use immunity situations, but it also

01 55 41PM 7 seemed to me he was talking about advising

01 55 43PM 8 defendants of rights. And different situations --

01 55 52PM 9 you know, if you look into the area of when an

01 55 57PM 10 attorney represents a client and then the client

01 56 00PM 11 wishes to testify and what happens if the attorney

01 56 03PM 12 believes that the client might not tell the truth.

01 56 08PM 13 I guess, Mr. Kelly, you're thinking along

01 56 09PM 14 those lines. I've not seen this come up with an

01 56 13PM 15 attorney who's advising a witness, not a party, not

01 56 17PM 16 a defendant, but a witness.

01 56 21PM 17 Are you saying you happen to know that

01 56 24PM 18 the concepts are parallel, same kind of procedure

01 56 28PM 19 should be followed?

01 56 29PM 20 MR. KELLY: No, Judge. I have cross-examined

01 56 33PM 21 many witnesses who have been provided use immunity.

01 56 40PM 22 And this is the first time that I've heard a member

01 56 43PM 23 of the bar stand up and say I'm advising this

01 56 43PM 24 witness not to testify. He's not following my

01 56 47PM 25 advice. And here are the reasons why. Please seal

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01 56 51PM 1 it with the Court to protect myself.

01 56 54PM 2 And ultimately what we're considering is

01 56 58PM 3 at issue, whether it's the State of Arizona, the

01 57 01PM 4 Court or Mr. Li and myself, are the due-process

01 57 04PM 5 rights of Mr. Ray.

01 57 06PM 6 THE COURT: Well, that sounds like you need to

01 57 08PM 7 look into that, Mr. Kelly. Because I have a whole

01 57 12PM 8 calendar this afternoon. And if you've got

01 57 14PM 9 something to file -- I don't mean to cut you off on

01 57 16PM 10 that. But I have a full call calendar I've got to

01 57 19PM 11 get involved in. And I cannot take the whole

01 57 21PM 12 afternoon discussing this issue.

01 57 23PM 13 So we will assemble at 8:30 tomorrow, and

01 57 31PM 14 we'll just go from there. At this point, though,

01 57 33PM 15 it appears that -- you know -- you've heard what

01 57 36PM 16 the various people have said.

01 57 38PM 17 Mr. Launders, you want to say something.

01 57 40PM 18 Please step forward so I can make sure that

01 57 43PM 19 Mr. Rock hears what his attorney has to say.

01 57 48PM 20 MR. LAUNDERS: And Mr. Rock is going to be

01 57 49PM 21 ordered to appear tomorrow at 8:30?

01 57 51PM 22 THE COURT: He indicates he's going to

01 57 53PM 23 testify.

01 57 54PM 24 Is he under subpoena, Mr. Hughes?

01 57 57PM 25 MR. HUGHES: I believe he is.

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01 57 58PM 1 THE COURT: Well, there is a subpoena, then,

01 58 02PM 2 that has to be honored in any event.

01 58 05PM 3 MR. HUGHES: I don't think he needs to be

01 58 08PM 4 there at 8:30. It's not the Court's intention to

01 58 09PM 5 have the witness begin to testify until 9:30. Is

01 58 13PM 6 that correct?

01 58 13PM 7 THE COURT: Closer to 9:30. The jury is not

01 58 16PM 8 coming until 9:15.

01 58 18PM 9 MR. HUGHES: So I don't think he needs to be

01 58 18PM 10 there at 8:30.

01 58 20PM 11 THE COURT: That's true. Although it might be

01 58 22PM 12 a good idea to be there by 9:15 or so.

01 58 29PM 13 Okay. Thank you. I'm going to go ahead

01 58 31PM 14 and adjourn on this matter.

01 58 36PM 15 MR. HUGHES: Thank you, Your Honor.

16 (The proceedings concluded.)

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Mina G. Hunt (928) 554-8522

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss REPORTER'S CERTIFICATE

3
4 I, Mina G Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action

16 In witness whereof, I have affixed my
17 signature this 18th day of January, 2012

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MINA G HUNT, AZ CR No. 50619
CA CSR No 8335

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25

Mina G Hunt (928) 554-8522


1 STATE OF ARIZONA)
2) ss: REPORTER'S CERTIFICATE
3 COUNTY OF YAVAPAI)
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25 CA CSR No. 8335